	MICHIGAN DEPT. OF CORRECTIONS	EFFECTIVE DATE September 1, 1981	NUMBER PD-CWA-45.12
<h1>POLICY DIRECTIVE</h1>		SUPERSEDES NO. NEW	DATED
SUBJECT GUIDELINES FOR COMMUTATION RECOMMENDATIONS		PAGE 1 OF 4	
<p>APPLICATION</p> <p>POLICY</p>	<p>All residents serving life sentences and those serving long-indeterminate sentences who are not eligible for special parole consideration or release under the provisions of the "Lifer Law" (MCLA 791.234, paragraph 4)."</p> <p>Commutation is a form of clemency granted by the Governor where justice calls for mitigation of sentence. Such mitigation may be warranted because of a terminal or totally disabling and irreversible medical condition, because of the extraordinary severity of some individual sentences, or because of extraordinary accomplishment during incarceration. Commutation is not a routine mechanism of release to be used when other means of mitigation of sentence are available.</p> <p>In the past only those prisoners serving for murder in the First Degree were denied the possibility of any consideration for special parole or "Lifer Law" release, and the volume of commutations was, therefore, not great. Now that commutation is the only avenue of mitigation for virtually all persons arriving in prisons with long terms, the burden of commutation review will be much greater. This increase in volume makes it incumbent that guidelines be established to expedite review of these cases; however, a final decision to recommend commutation remains solely with the Parole Board.</p> <p>While it is not feasible to construct guidelines which will cover all conceivable cases, those promulgated herein will apply to all but a few of the cases for whom commutation review is justified by virtue of meritorious prison performance and who are serving life and extraordinarily long-indeterminate sentences.</p> <p>These guidelines shall be the basis for referring most cases to the Governor with a recommendation for commutation. It must be recognized that the final decision as to whether commutation shall be granted on each individual case rests solely with the Governor.</p> <p><u>Cases Covered by the Guidelines:</u></p> <p>The guidelines cover residents serving life or long-indeterminate sentences who are not eligible for special parole consideration or release under the "Lifer Law" and who are serving for offenses of homicide, robbery, or sexual assault. These three crime groups cover the majority of offenders whose terms are of such length that commutation may be indicated.</p>		

Please Note
Final paragraph
Pg 4

Each person meeting these criteria for commutation shall have his or her guideline scores computed on the basis of the offense and prior criminal record. These scores shall then be applied to the appropriate grid to determine the number of years to be served before commutation may be recommended. If that number of years is significantly less than the time which must otherwise be served before community release, then the individual will be a potential candidate for release recommendation under these guidelines. If the resident could be released on parole or to a community program before the time indicated by the guidelines, then commutation will not be considered. This will be true of a majority of cases, since guidelines are intended for extraordinary relief where sentences are much longer than normal and behavior is exemplary.

Exception From the Guidelines:

In some cases, the circumstances surrounding the offense or the offender's past history may be such that a recommendation for commutation based on the guidelines will not be made, because the deep and lasting impact on the community is so great that release would shock the public conscience, or because these circumstances suggest to the Board at the time of review that the offender may never be safely released. Where such cases occur, the Board will, on its first review of the guidelines recommendations, give the prisoner a written statement to the effect that it does not expect to use these guidelines in making a recommendation in his or her case, and will include the reasons therefore.

Commutation of Cases Not Included in the Guidelines:

- (1) Some persons receive life or very long sentences for crimes such as kidnapping or conspiracy for which guideline grids have not been promulgated. The Board will consider these cases on an individual basis, considering both the prior criminal record and the offense in order to make recommendations for commutation in a manner which will be equitable with cases that are covered by the guidelines. In making this judgment, the Board may find it helpful to compute the prior record score using a guideline score sheet, and by making a determination that the severity of the offense is "similar" to the severity of an offense covered by the guidelines; it may then use an appropriate grid to reach a time for recommendation.
- (2) There are instances in which persons serving for robbery, sexual assault or homicide are technically eligible for release under the "Lifer Law," but for whom the same court which set a much longer than usual sentence refuses to allow

BUREAU/POST NUMBER

SUPERSEDES NO.
NEW

release under the "Lifer Law" even after the individual has served much more time than would be usual for persons with similar backgrounds committing similar crimes. In such cases the Board may at its discretion make a recommendation for release based on the length of time recommended by the guidelines.

- (3) Irreversible and totally disabling or terminal medical conditions may result in a recommendation of commutation in cases not covered or not yet eligible under the guidelines when the Board determines that such release would not jeopardize the public safety and is in the best interest of all concerned.

Modification of Guideline Recommendations by Prison Behavior:

- (1) Extremely serious and/or persistent misconduct shall disqualify a prisoner from consideration under this policy.
- (2) There must have been no guilty major misconduct finding within one year of consideration for recommendation.
- (3) If at any time during the sentence for which commutation is being considered, the prisoner has been found guilty of an assaultive crime by court of law or by an administrative hearing of an assaultive act which would be a felony if prosecuted, the Board will normally use the date of that act rather than the commitment date to initiate the time period prescribed in the guidelines.
- (4) Three or more major misconducts within the last five years will delay consideration by one year.
- (5) A prisoner whose work and conduct has been exemplary will receive recommendation one year earlier than indicated in the guideline grid.

Implementation:

Procedures will be developed by the reception centers, the various institutions and the Parole Board for the scoring and review of cases meeting the above criteria. Cases serving life terms and Proposal "B" cases with minimum terms of five years or longer already in the system as of the effective date should be scored and screened by the institutions by January 1, 1982; all new arrivals coming under the guidelines should be scored and screened while in the reception process. Residents will be given copies of their score sheets as they are completed, but must be advised that these are subject to Parole Board review.

Notification and Appeal:

By the effective date of this policy, the policy and the copies of the guideline score sheets and grids shall be published in the penal press of each facility or otherwise made available to all residents serving for one of the crime groups covered by the guidelines and who also meet the criteria in the application sentence of this policy; this is done so they may be aware of their own probable status with respect to commutation recommendations.

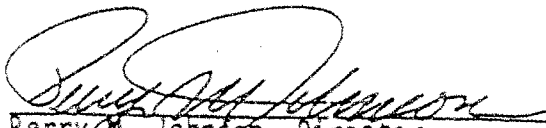
If any resident feels that his or her guideline score has not been correctly computed, he or she may request an administrative hearing under Rule 310 on the matter. Disagreement with the year values inserted in the cells of the guideline grids, or with the particular items or item weights shown on the guideline score sheets, is not a basis for review.

Revision of the Guidelines:

The Parole Board may at any future time revise the guidelines or grids as it deems appropriate, but any resident who has already entered the system and received a recommendation date under one form of the guidelines may not have that date delayed by any later revision of this kind.

AUTHORITY: MCL 791.202, .204, .206, .232, .244.
Corrections Commission, March 11, 1981.

APPROVED:


Perry M. Johnson, Director

MAY - 6 1981

Date


Edward S. Turner, Chairman
Michigan Parole Board

MAY - 6 1981

Date

PMJ:EST:WLK:ks
5/6/81

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WHEN PERRY JOHNSON WAS DIRECTOR HE OFTEN WAS QUOTED AS SAYING THAT LIFERS WERE THE BEST TYPE OF PRISONER TO RELEASE. THEY HAVE BEEN LOCKED UP FOR SO LONG - THEY WILL NOT RETURN. MR. McCONNEL WHO WAS A FORMER CHAIRMAN OF THE PAROLE BOARD HAD AN ARTICLE IN THE LANSING STATE JOURNAL IN 1990, TAKING GOV. BLANCHARD TO TASK FOR STOPPING THE RELEASE AFTER COMMUTATION OF 1st DEGREE LIFERS.

DID YOU KNOW THAT MSU DID A STUDY ON LIFERS IN 1973?! THEY CHECKED THE DEPARTMENT OF CORRECTIONS RECORDS OF 268 1st DEGREE MURDERERS WHO WERE PAROLED BETWEEN 1959 AND 1972. OF THE 268, ONLY ONE WAS RETURNED TO PRISON AND THAT WAS FOR A MINOR PAROLE VIOLATION (HE WAS AGAIN RELEASED BY THE PAROLE BOARD AFTER SERVING ANOTHER TWO YEARS.)

"FOR SHAME!!! THERE ARE BETTER WAYS TO PUNISH CRIMINALS THAN WITH PRISON. THE ANNUAL COST OF INCARCERATION IS UPWARD OF \$20,000 AND \$69,000 FOR PRISONERS OVER AGE 60. IT WOULD BE A SHAME TO NEGLECT CHEAPER AND MORE EFFECTIVE ALTERNATIVES." (GEORGE F. WILL.)

TAKE A LOOK AT COMMUTATIONS GIVEN BY PREVIOUS GOVERNORS:

G. MENNEN WILLIAMS	143
JOHN SWAINSON	76
GEORGE ROMNEY	107
WILLIAM MILLIKEN	94
JAMES BLANCHARD	1
JOHN ENGLER	1 34

THE ONE COMMUTATION GIVEN BY JOHN ENGLER, MR. A. RAHMAN, WAS GIVEN ONLY AFTER MUCH PUBLICITY AND PRESSURE BY THE MEDIA AND PUBLIC. MR. A. RAHMAN WAS ONLY ONE OF MANY FELONY LIFERS, WHAT ABOUT THE OTHERS WHO DESERVE JUSTICE AS WELL???

MICHIGAN DEPARTMENT OF CORRECTIONS
COMMUTATION AND LONG TERM RELEASE GUIDELINES – HOMICIDE

CSO-452B

Prisoner's Name: Polick, John A

No.: A-144748

Scored by: Polick, John A

Date: 6-24-85

Institution: K.C.F.

Reviewed by Parole Board, Initials: _____

Date: _____

PRIOR CRIMINAL HISTORY SCORE

Juvenile History

None =0

A Juvenile Act which would be felony for Adult =2 0

Two or More such Acts =3 0

Adult Misdemeanors - Assaultive Only

Two or Less =0 0

Three or More =1 0

Prior Jail Terms

One or None =0

Two or Three =1 0

Four or More =2 0

Prior Felony Convictions

None =0

One =1

Two =2

Three or More =3 0

If any of above involved Assaultive Behavior Add +1

Prior Prison Term

None =0

One =2 6

Two or More =3

Prior Adult Probation, CRP, or Parole Revocations

None =0 0

One or More =1

On Probation, CRP Status, or Parole at Time of Instant Offense

No =0

Yes =1 0

Total History Score (0 - 15) 6

OFFENSE SEVERITY SCORE

Instant Offense Conviction

Manslaughter =0

Murder, Second Degree; Attempt Murder =2 6

Assault with Intent to Commit Murder.... =2

Murder, First Degree =6

Offender's Role

Minor or Peripheral Role in Crime =0

Alone or Equal Partner =1 0

Leader, Where two or more offenders =2

Offender's Intention

No Intent to Kill or Injure =0

Intent to Injure Only =2 0

Intent to Kill =3

Torture, Sexual Assault or Sadism Inflicted

No =0 0

Yes =3

Professional/Organized Crime, or Hired Killing

No =0 0

Yes =4

Number of Victims

One =0

Two =2 0

More than Two =3

Victim Vulnerability

Victim Not Unusually Vulnerable =0 0

Victim Unusually Vulnerable =2

Total Offense Score (0 - 23) 6

TOTAL HISTORY SCORE

	0-2	3-5	6-10	11-15
0	6 years	7	8	9
1-3	8	10	13	16
4-5	10	16	18	20
6-9	14	18	22	25
10-12	18	22	27	30
13+	20	25	30	30+ years

Note: Exemplary Institutional conduct will result in consideration one year earlier than shown above. A poor Institutional record will prevent or delay consideration as indicated in Policy Directive DWA-45.12.

Term in Yrs. from Grid Above = 14 years

Minimum Term Imposed by Court = Life

CHECK ONE:

- ☐ Grid Term is same or longer than court term so guidelines DO NOT apply.
- ☒ Grid Term is less than court term so guidelines DO apply (if case meets policy criteria).

NOTICE OF ACTION/PAROLE BOARD

39-4-02

CAX-114A 1/84

NUMBER	(LAST) NAME	LOCATION	CONSIDERATION DATE			
A119908	HAYTON, James	SMNE	7/1/85			
ACTION		REASON CODE	TERM (MOS)	NEXT ACTION DATE	INSTRUCT.	OFFICIAL DATE
COMMUTATION SCORE CONFIRMED		I-94		1/87		3/87

Actual release is subject to investigation and approval of the placement plan. Institutional misconduct could result in loss of parole

Mr. Hayton continues to maintain an excellent institutional record. The Board is willing to confirm the guideline score of 27 years at this time. He has now completed 17½ years of service.

BY Richard Walbrecq, Member

BFS COMMENTS

PLACEMENT

INST.	ASSIGNED TO:	DATE	REPORT DUE
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Action Codes:

PAROLES & REINSTATEMENTS

60	Reinstatement on Parole	29	Poor Prognosis	35	Board Denied Special
61	Regular Parole	31	Bad Institution Record	37	Contract Suspension
62	Parole in Custody	32	Chronic Recidivist	38	Rescind Parole
63	Contract Full Minimum	34	Protect Society	39	Suspended Parole
64	Special Parole	36	For Improved Record	44	Supplemental Report on Minimum
65	90 Day Early Parole	87	Continued at own Request	52	Complete Program
66	Contract with the 90 Days			70	Voluntary Term. of Proposed Contract
67	Reparole on Same Term			80	Low Risk Interview
68	Contract Special Parole	41	Insufficient Information	81	Special Consideration Interview
69	Low Risk Special	42	Current Psychiatric Report	82	Reinstatement on Contract
76	Parole Without Interview	43	Current Medical Report	83	Contract Interview
		45	Information and Study	84	RGT Recommended by Warden
		46	Further Discussion	85	Volunteer Contract Terminate
		47	Investigation	86	Not available for Hearing
		48	Satisfactory Placement	88	Contract Rejected (by resident)
				89	Voluntary Contract Term (job furlough)
				90	Rehearing — Order Sustained
				91	Long Indeterminate Interview
				92	Lifer Law Interview
				93	Murder First Interview
				94	Commutation Score Confirmed
				95	Commutation Score Unconfirmed

DISPOSITION DEFERRED

OTHER ACTION

Corrections
Commission

Gwen Andrew
Brunetta Brandy
Thomas K. Eardley, Jr.
James H. Lincoln
Duane L. Waters, M.D.



James Blanchard, Governor
Department of Corrections

Stevens T. Mason Building, Lansing, Michigan 48909

Robert Brown, Jr., Director

June 16, 1986

Ms. Mary Jane Hayton
6582 Robinhood Road
Hillsboro, Ohio 45133

Dear Ms. Hayton:

Re: James Hayton, 119908

This will acknowledge your recent letter to Governor Blanchard regarding the release status of your son, James Hayton. The Governor's Office has referred your correspondence to the Parole Board for a reply, as the Parole Board acts in an advisory capacity to the Governor in all Executive Clemency matters.

I am attaching a copy of the Parole Board's most recent Notice of Action dated July 1, 1985. Mr. Hayton's case is one of the few Murder-First cases in the system where the Parole Board has elected to confirm his commutation guidelines score. This decision was principally based on Mr. Hayton's continued excellent institutional adjustment record. To date, Mr. Hayton has served approximately 19 years of a life sentence for First Degree Murder. The Parole Board's confirmed guidelines score of 27 years means that at the service of 27 years the Parole Board is committed to processing his case for commutation. This decision is, of course, predicated on Mr. Hayton's continued positive institutional adjustment and performance.

I trust this information will be of some value. Thank you for writing.

Very truly yours,

THE PAROLE BOARD

Marvin C. May
49

Marvin C. May
Administrative Assistant

MM:gs

Attachment

cc: Governor's Office

evidence, circumstantial evidence,²⁴ or both. These principles are unaffected by this case.

Today we simply declare that the offense popularly known as felony murder, which, properly understood, has nothing to do with malice and is not a species of common-law murder, shall no longer exist in Michigan, if indeed it ever did.

WILLIAMS, J. (*concurring in part*). I concur in the result reached by my brothers FITZGERALD and RYAN. I agree with my brother FITZGERALD's and my brother RYAN's opinions as to their definitions of murder and as to definitions of malice in *People v Morrin*, 31 Mich App 301, 310-311; 187 NW2d 434 (1971).

In my opinion, it is the language of the statute that determines whether there need be proof of malice in a so-called felony-murder case. MCL 750.316; MSA 28.548, until its amendment this year, read as follows:

"All murder which shall be perpetrated by means of poison, or lying in wait, or any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate any arson, rape, robbery, burglary, larceny of any kind, extortion or kidnapping, shall be murder of the first degree * * *." (Emphasis supplied.)

What is critical in the statutory language is that the section begins "All murder which" and ends

²⁴ Of course, circumstantial evidence may properly include, if the killing occurred during the commission or attempted commission of any felony, the nature of the felony and attending circumstances. In some cases, no doubt, this evidence may persuade the trier of fact beyond a reasonable doubt that the defendant acted with malice. For this reason and those explained in Part VI of Justice FITZGERALD's opinion, the impact of today's decision on the administration of criminal justice is not likely to be profound.

"shall be murder of the first degree". In other words, what becomes murder of the first degree is not any *homicide which* is in connection with a poisoning, for example, or certain named felonies but a *murder which* is in connection with a poisoning or certain named felonies. The proof of malice is not essential to all forms of *homicide*, but it is essential to all forms of *murder*. *Maheer v People*, 10 Mich 212, 218 (1862). Hence, proof of a so-called felony murder under MCL 750.316 requires proof of malice as does any other murder.

I concur in Justice FITZGERALD's rule of retrospectivity.

STATE LEGISLATURES
(IN RE: FELONY MURDER RULE)
DID YOU KNOW? FYI!

Many state legislatures have also been active in restricting the scope of felony murder by imposing additional limitations. See *Fn 47 People v Aaron* 409 Mich 672.

Kentucky and Hawaii have specifically abolished the felony-murder doctrine.

Ohio has effectively abolished the felony-murder rule. It defines as involuntary manslaughter the death of another proximately resulting from the offender's commission or attempt to commit a felony.

Seven states have downgraded the offense and consequently reduced the punishment: See the following State Law.

1. Alaska (Alas §§Stat, 11.41.110, 11.41.11.5)
2. Louisiana (La Rev Stat Ann, §14:30:1.
3. New York (NY Penal Law, §125.25 (McKinney).
4. Pennsylvania (Pa Cons Stat Ann, 18 §2502 (Pundon).
5. Utah (Utah Code Ann, §76-5-203(1)). All have reduced it to second-degree murder.

Minnesota (Minn Stat Ann, §§609.185, 609.195) classifies felony murder as third-degree murder (with the exception of a killing in the course of criminal sexual conduct in the first or second degree committed with force or violence, which is punished as first-degree murder) which involves a sentence of not more than 25 years.

Wisconsin (Wis Stat Ann, §§940.02(2), 939.50(3)(b) makes felony murder a class B felony which is punishable by imprisonment not to exceed 20 years.

Three states require a demonstration of *mens rea* beyond the intent to cause the felony. The **Arkansas statute** (Ark Stat Ann, §§41.1502) states that the defendant must cause the death "under circumstances manifesting extreme indifference to the value of human life".

Delaware's (Del Code, tit 11, §636) first-degree murder statute requires that the defendant cause death recklessly in the course of a felony or with at least criminal negligence in the course of

one of the enumerated felonies. It defines as second-degree murder death caused with negligence in the course of non-enumerated felonies.

New Hampshire's capital and first-degree murder statutes require that death be caused knowingly in connection with certain enumerated felonies while its second degree murder statute requires that death be caused "recklessly under circumstances manifesting an extreme indifference to the value of human life".

The numerous modifications and restrictions placed upon the common-law felony-murder doctrine by courts and **legislatures** reflect dissatisfaction with the harshness and injustice of the rule.

The most fundamental characteristic of the felony-murder rule violates this basic principle in that it punishes all homicides, committed in the perpetration or attempted perpetration of proscribed felonies whether intentional, unintentional or accidental, without the necessity of proving the relation between the homicide and the perpetrator's state of mind.

This is most evident when a killing is done by one of a group of co-felons. The felony-murder rule completely ignores the concept of determination of guilt on the basis of individual misconduct. **The felony-murder rule thus "erodes the relation between criminal liability and moral culpability".**

Source of Data: Peo. Vs. Axon 409 Mich 672 (P. 703-9)